

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:	X	
	:	
CITY OF DETROIT, MICHIGAN,	:	Chapter 9
	:	
Debtor.	:	Case No. 13-53846 (SWR)
	:	
	:	Hon. Steven W. Rhodes
	:	
	X	

**AD HOC COPs HOLDERS' LIMITED OBJECTION AND
RESERVATION OF RIGHTS WITH RESPECT TO MOTION OF
DEBTOR FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
ASSUMPTION OF THAT CERTAIN FORBEARANCE AND OPTIONAL
TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF
THE BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT
PURSUANT TO RULE 9019, AND (III) GRANTING RELATED RELIEF**

Certain entities (the “Ad Hoc COPs Holders”)¹ holding \$375 million in principal amount of Certificates of Participation (the “COPs”) issued by the Detroit Retirement Systems Funding Trust 2005 and Detroit Retirement Systems Funding Trust 2006 hereby submit this limited objection and reservation of rights (the “Limited Objection”) to the Motion of Debtor for Entry of an Order (i) Authorizing the Assumption of That Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (ii) Approving Such Agreement Pursuant to Rule 9019, and (iii) Granting Related Relief (the “Motion to Assume the

¹ The Ad Hoc COPs Holders consist of those entities disclosed on Exhibit A to the First Verified Statement Pursuant to Rule 2019 filed on August 16, 2013 [Docket No. 359] (the “First 2019 Statement”).

Forbearance Agreement"). [Dkt. Nos. 17 & 157.] In support of this Limited Objection, the Ad Hoc COPs Holders respectfully state as follows:²

Background

1. The Ad Hoc COPs Holders are parties-in-interest in this case because they hold COPs issued by the Funding Trusts in 2005 and 2006 and supported by certain services contracts (the "**Service Contracts**") between the Debtor and each of the General Retirement System Service Corporation and the Police and Fire Retirement System Service Corporation (the "**Service Corporations**"). U.S. Bank National Association ("**U.S. Bank**") serves as Trustee for the COPs.

2. Concurrently with the issuance of the 2006 COPs, the Service Corporations entered into a series of swap transactions (the "**Swaps**") with UBS AG and SBS Financial Products Company LLC, with Merrill Lynch Capital Services, Inc. as credit support provider to SBS (together, the "**Swap Counterparties**") designed to fix the Service Corporations' floating interest rate exposure under the Series B 2006 COPs.

3. The payments under the COPs and Swaps are administered by U.S. Bank as Contract Administrator pursuant to certain Contract Administration Agreements by and among certain of the Funding Trusts and the Service Corporations, and U.S. Bank as Trustee.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion to Assume the Forbearance Agreement.

4. In 2009, the Debtor entered into a Collateral Agreement by and among the Debtor, the Swap Counterparties, the Service Corporations, and U.S. Bank as Custodian under the Collateral Agreement (the “**2009 Restructuring**”).

5. On July 15, 2013, the Debtor entered into a Forbearance and Optional Termination Agreement (the “**Forbearance Agreement**”) by and among the Debtor, the Swap Counterparties, and the Service Corporations.

6. Concurrently with its chapter 9 bankruptcy filing, on July 18, 2013, the Debtor filed the Motion to Assume the Forbearance Agreement.

7. At the first-day hearing on July 24, 2013, the Court heard the Debtor’s motion to confirm the application of the automatic stay and to extend the stay to certain state entities and agents of the city. [Dkt. No. 56]. During that hearing, the Debtor stated that the automatic stay does not apply to the Swap Counterparties. *See Hr’g Trans. at [67:9-10] (July 24, 2013)* (H. Lennox: “We are not seeking to protect any swap counterparties, so I want to make that clear.”) (attached as **Exhibit 6-A**). The Court also instructed that any party wishing to extend the automatic stay must do so by separate motion. *Id.* at 85:25-86:2.

8. On August 2, 2013, the Court held a status conference concerning scheduling for the Debtor’s Motion to Assume the Forbearance Agreement. During that hearing, counsel for Syncora Guarantee Inc. and Syncora Capital Assurance Inc., who had issued insurance policies to guarantee certain payments on the Swaps, expressed concern that the Debtor’s Proposed Order [Dkt. Nos. 17 Exh. 1 & 157 Exh. 1] “would entail the Court making judicial findings, judicial declarations that could foreclose the rights of third parties . . .” *Hr’g Tr.. at 124:12-14 (Aug. 2, 2013)* (attached as **Exhibit 6-B**).

9. The Court responded: "If that's your concern, I will assure you at the outset that my decision will be nothing more than to approve the decision of the city to assume this contract and enter into the settlement or disapprove of it." *Id.* at 124:15-18.

Limited Objection

10. By this motion, the Debtor seeks authority to assume the Forbearance Agreement as an executory contract under 11 U.S.C. § 365 and approval to enter into the settlement terms set forth therein under Federal Rule of Bankruptcy Procedure 9019 so that it may terminate the Swaps after settling the claims held by the Swaps Counterparties, allowing the Debtor to gain access to the Casino Revenues. *See Motion to Assume the Forbearance Agreement at ¶ 24.*

11. The Ad Hoc COPs Holders have filed this limited objection solely to ensure that any relief granted is no broader than as described in the Court's remarks set forth above. They seek to ensure that their rights as third-parties are not affected by the relief sought. Specifically, the Ad Hoc COPs Holders seek confirmation that (i) no relief granted here shall be construed to modify or extend the automatic stay, except as explicitly set out in the Debtor's Proposed Order itself, (ii) nothing contained in the Court's decision affects the rights of any third party (such as one of the Ad Hoc COPs Holders, or U.S. Bank as trustee therefor) against any other third party (such as a Swap Counterparty), and (iii) the Forbearance Agreement does not modify or otherwise impair the rights of any third party (such as one of the Ad Hoc COPs Holders, or U.S. Bank as trustee therefor) against any other third party (such as a Swap Counterparty) under the COPs, swaps, and 2009 Restructuring and all documents executed in connection therewith, including, without limitation, the Transaction Documents, the Contract Administration Agreements and the Service Contracts.

12. The Ad Hoc COPs Holders believe that they (or U.S. Bank in its various related capacities) may have the right to recover from the Swap Counterparties payments made to such Swap Counterparties under the Forbearance Agreement pursuant to prior agreements among the Funding Trusts and the Swap Counterparties (the “Prior Agreements”). Whether or not these rights exist is not before the Court today, but the Ad Hoc COPs Holders wish to preserve any and all rights they may have under the Prior Agreements, whether those rights will be determined in this Court or another forum.

13. In light of these concerns, the Ad Hoc COPs Holders respectfully request that the Debtor’s Proposed Order be amended as set forth in Exhibit 1-A hereto to reflect that third-party rights against any and all parties in interest, except the Debtor, remain unaffected by entry of the order approving the Motion to Assume the Forbearance Agreement.³

WHEREFORE, the Ad Hoc COPs Holders request that if the Court approves the Motion to Assume the Forbearance Agreement, the Court (i) enter an order substantially in the form attached hereto as Exhibit 1-A, and (ii) grant such other relief as the Court deems just and proper.

³ A redline reflecting changes to the Debtor’s Proposed Order is attached as Exhibit 1-B. Without limiting the generality of the forgoing, nothing in this Limited Objection shall be construed as an acknowledgment or admission of the truth, accuracy, completeness, relevance or admissibility of any of the affidavits filed by any of the parties or any statements made under any pleading by any of the parties in connection with the Motion to Assume the Forbearance Agreement.

/S/Deborah L. Fish
ALLARD & FISH, P.C.
Deborah L. Fish
2600 Buhl Building
535 Griswold
Detroit, MI 48226
Telephone: (313) 961-6141
Facsimile: (313) 961-6142
dfish@allardfishpc.com
P36580

- and -

KRAMER LEVIN NAFTALIS
& FRANKEL LLP
Thomas Moers Mayer
Jonathan M. Wagner
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000

Counsel to the Ad Hoc COPs Holders

Dated: August 16, 2013
z:\dexia\obj forbearance agrmt.final.doc

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

	X
In re:	:
CITY OF DETROIT, MICHIGAN,	: Chapter 9
	:
Debtor.	: Case No. 13-53846 (SWR)
	:
	: Hon. Steven W. Rhodes
	:
	X

EXHIBIT LIST

<u>Exhibit</u>	<u>Description</u>
1-A	Proposed Order
1-B	Redline Proposed Order
2	Not Applicable
3	Not Applicable
4	Certificate of Service
5	Not Applicable
6-A	Transcript Excerpts - July 24, 2013
6-B	Transcript Excepts - Aug. 2, 2013

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re: : Chapter 9
: Case No. 13-53846
CITY OF DETROIT, MICHIGAN : Hon. Steven W. Rhodes
Debtor. :
:
X

**ORDER (I) AUTHORIZING THE ASSUMPTION
OF THAT CERTAIN FORBEARANCE AND OPTIONAL
TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF
THE BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT
PURSUANT RULE 9019, AND (III) GRANTING RELATED RELIEF**

This matter coming before the Court on the motion (the “Motion”)¹ for entry of an order (i) authorizing the assumption of that certain forbearance and optional termination agreement pursuant to section 365(a) of the Bankruptcy Code, (ii) approving such agreement pursuant Bankruptcy Rule 9019, and (iii) granting related relief; the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the “Hearing”); the Court having recognized that nothing in this Order or the Forbearance Agreement affects the rights of third parties against each other or against the Swap Counterparties and that nothing in this Order shall be construed to modify or extend the automatic stay except as expressly stated hereunder; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

¹Capitalized terms used herein are accorded the meanings given to them in the Motion with the exception of Swap Counterparties, which is expanded to include Merrill Lynch Capital Services, Inc.

EXHIBIT 1-A

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:

A. Jurisdiction and Venue. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. Notice. Notice of the Motion and the Hearing was sufficient under the circumstances. As evidenced by the certificate of service, notice of the Motion and Hearing has been given to the following: (a) the trustees, transfer agents and/or paying agents, as applicable, for the City's secured and unsecured bonds; (b) the City's largest unsecured creditors as identified on the list filed under Bankruptcy Rule 1007(d); (c) the unions representing certain of the City's employees and retirees; (d) the four associations of which the City is aware representing certain retirees of the City; (e) the City's pension trusts; (f) the insurers of the City's bonds; (g) the COPs; (h) certain significant holders of the COPs; (i) the Swaps; and (j) the insurers of the Swaps. In addition, a copy of the Motion was served on the Office of the United States Trustee. Cause exists to modify the requirement under Bankruptcy Rule 2002(a) that a hearing on approval of a compromise or settlement shall be given to all creditors and, accordingly, no other or further notice is required under the circumstances.

C. Assumption Appropriate. The assumption of the Forbearance Agreement and other relief sought in the Motion will benefit the City and is a sound exercise of the City's business judgment, is in the best interest of the City, its creditors and other parties in interest and is based on good, sufficient and sound business purposes and justifications. As of the date hereof, no defaults exist under the Forbearance Agreement and the City is not obligated to pay any cure amounts in connection with the assumption of the Forbearance Agreement.

D. Rule 9019 Authorization. The City is authorized, but not required, to adopt the Forbearance Agreement pursuant to Bankruptcy Rule 9019. The Forbearance Agreement is

fair, reasonable and equitable, subject to the third-party reservation of rights hereinafter provided.

E. Consent to Use of Casino Revenues. Pursuant to Section 1.2 of the Forbearance Agreement, UBS AG and MLCS consent to the City's use of the Casino Revenue as set forth in the Forbearance Agreement. The consent of UBS AG and MLCS will allow the City immediate access to its Casino Revenue as set forth in Forbearance Agreement, and no other or further consents are required.

F. Modification of Automatic Stay. Good cause exists to modify the automatic stay, pursuant to section 362(d) of the Bankruptcy Code, solely to permit UBS AG and MLCS to petition for a writ of mandamus as a remedy for nonperformance under Section 2 of the Forbearance Agreement.

G. Arm's-Length Agreement. The Forbearance Agreement was negotiated at arm's length and in good faith by all parties to it. UBS AG and MLCS are not insiders of the City as that term is defined in Bankruptcy Code section 101(31). The parties' entry into and performance under the Forbearance Agreement does not violate any law, including the Bankruptcy Code, and does not give rise to any claim or remedy against the parties thereto, except as may be expressly set forth in this Order or in such agreements

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein and subject to the reservations of rights and other conditions as set forth herein.
2. Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise

resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.

3. Pursuant to section 365(a) of the Bankruptcy Code, the City is authorized to assume the Forbearance Agreement, attached as Exhibit 6 to the Motion.

4. The Forbearance Agreement is approved in its entirety. The City is authorized to perform its obligations that arise from the Forbearance Agreement pursuant to Bankruptcy Rule 9019, and any actions taken heretofore in furtherance of these obligations are hereby ratified.

5. The Custodian under the Collateral Agreement is hereby authorized to rely upon the terms of this Order and UBS AG and MLCS' consent to the use by the City of the Casino Revenue.

6. The automatic stay imposed pursuant to section 362 of the Bankruptcy Code is modified solely to permit UBS AG and MLCS to petition a court of competent jurisdiction for a writ of mandamus as a remedy for nonperformance under Section 2 of the Forbearance Agreement. No other modification or extension of the automatic stay is granted hereunder.

7. The City is authorized to take any and all actions necessary or appropriate to implement the terms of this Order and the Forbearance Agreement.

8. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement or interpretation of this Order.

9. Notwithstanding any other provision hereof (including without limitation paragraph 8) or any provision in the Forbearance Agreement, this Order shall not prejudice any rights of any third parties against each other, or their assertion of such rights against other non-

Debtor third parties. Nothing in the Forbearance Agreement and this Order shall be deemed to waive, modify or otherwise impair or enhance the respective rights of any third parties against each other under the COPs, swaps, and 2009 restructuring and all documents executed in connection therewith, including, without limitation, the Transaction Documents, the Contract Administration Agreements, and the Service Contracts, and all third parties expressly reserve all rights and remedies that each has now or may in the future have under those same documents and/or at law or in equity.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

----- X
In re: : Chapter 9
: Case No. 13-53846
CITY OF DETROIT, MICHIGAN : Hon. ~~Steven W. Rhodes~~ [Steven W. Rhodes](#)
Debtor. :
:
----- X

**ORDER (I) AUTHORIZING THE ASSUMPTION
OF THAT CERTAIN FORBEARANCE AND OPTIONAL
TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF
THE BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT
PURSUANT RULE 9019, AND (III) GRANTING RELATED RELIEF**

This matter coming before the Court on the motion (the “[Motion](#)”)¹ for entry of an order (i) authorizing the assumption of that certain forbearance and optional termination agreement pursuant to section 365(a) of the Bankruptcy Code, (ii) approving such agreement pursuant Bankruptcy Rule 9019, and (iii) granting related relief; the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the “[Hearing](#)”); [the Court having recognized that nothing in this Order or the Forbearance Agreement affects the rights of third parties against each other or against the Swap Counterparties and that nothing in this Order shall be construed to modify or extend the automatic stay except as expressly stated hereunder](#); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

¹Capitalized terms used herein are accorded the meanings given to them in the Motion [with the exception of Swap Counterparties, which is expanded to include Merrill Lynch Capital Services, Inc.](#)

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:

A. Jurisdiction and Venue. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. Notice. Notice of the Motion and the Hearing was sufficient under the circumstances. As evidenced by the certificate of service, notice of the Motion and Hearing has been given to the following: (a) the trustees, transfer agents and/or paying agents, as applicable, for the City's secured and unsecured bonds; (b) the City's largest unsecured creditors as identified on the list filed under Bankruptcy Rule 1007(d); (c) the unions representing certain of the City's employees and retirees; (d) the four associations of which the City is aware representing certain retirees of the City; (e) the City's pension trusts; (f) the insurers of the City's bonds; (g) the COPs; (h) certain significant holders of the COPs; (i) the Swaps; and (j) the insurers of the Swaps. In addition, a copy of the Motion was served on the Office of the United States Trustee. Cause exists to modify the requirement under Bankruptcy Rule 2002(a) that a hearing on approval of a compromise or settlement shall be given to all creditors and, accordingly, no other or further notice is required under the circumstances.

C. Assumption Appropriate. The assumption of the Forbearance Agreement and other relief sought in the Motion will benefit the City and is a sound exercise of the City's business judgment, is in the best interest of the City, its creditors and other parties in interest and is based on good, sufficient and sound business purposes and justifications. As of the date hereof, no defaults exist under the Forbearance Agreement and the City is not obligated to pay any cure amounts in connection with the assumption of the Forbearance Agreement.

D. Rule 9019 Authorization. The City ~~was~~is authorized, but not required, to ~~seek approval of~~adopt the Forbearance Agreement pursuant to Bankruptcy Rule 9019. The

Forbearance Agreement is fair, reasonable and equitable, subject to the third-party reservation of rights hereinafter provided.

E. Consent to Use of Casino Revenues. Pursuant to Section 1.2 of the Forbearance Agreement, UBS AG and MLCS consent to the City's use of the Casino Revenue as set forth in the Forbearance Agreement. The consent of UBS AG and MLCS will allow the City immediate access to its Casino Revenue as set forth in Forbearance Agreement, and no other or further consents are required.

F. Modification of Automatic Stay. Good cause exists to modify the automatic stay, pursuant to section 362(d) of the Bankruptcy Code, solely to permit UBS AG and MLCS to petition for a writ of mandamus as a remedy for nonperformance under Section 2 of the Forbearance Agreement.

G. Arm's-Length Agreement. The Forbearance Agreement was negotiated at arm's length and in good faith by all parties to it. UBS AG and MLCS are not insiders of the City as that term is defined in Bankruptcy Code section 101(31). The parties' entry into and performance under the Forbearance Agreement does not violate any law, including the Bankruptcy Code, and does not give rise to any claim or remedy against the parties thereto, except as may be expressly set forth in this Order or in such agreements.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein and subject to the reservations of rights and other conditions as set forth herein.
2. Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise

resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.

3. Pursuant to section 365(a) of the Bankruptcy Code, the City is authorized to assume the Forbearance Agreement, attached as Exhibit 6 to the Motion.

4. The Forbearance Agreement is approved in its entirety. The City is authorized to perform its obligations that arise from the Forbearance Agreement pursuant to Bankruptcy Rule 9019, and any actions taken heretofore in furtherance of these obligations are hereby ratified.

5. The Custodian under the Collateral Agreement is hereby authorized to rely upon the terms of this Order and UBS AG and MLCS' consent to the use by the City of the Casino Revenue.

6. The automatic stay imposed pursuant to section 362 of the Bankruptcy Code is modified solely to permit UBS AG and MLCS to petition a court of competent jurisdiction for a writ of mandamus as a remedy for nonperformance under Section 2 of the Forbearance Agreement. No other modification or extension of the automatic stay is granted hereunder.

7. The City is authorized to take any and all actions necessary or appropriate to implement the terms of this Order and the Forbearance Agreement.

8. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement or interpretation of this Order.

9. Notwithstanding any other provision hereof (including without limitation paragraph 8) or any provision in the Forbearance Agreement, this Order shall not prejudice any rights of any third parties against each other, or their assertion of such rights against other

non-Debtor third parties. Nothing in the Forbearance Agreement and this Order shall be deemed to waive, modify or otherwise impair or enhance the respective rights of any third parties against each other under the COPs, swaps, and 2009 restructuring and all documents executed in connection therewith, including, without limitation, the Transaction Documents, the Contract Administration Agreements, and the Service Contracts, and all third parties expressly reserve all rights and remedies that each has now or may in the future have under those same documents and/or at law or in equity.

Document comparison by Workshare Compare on Friday, August 16, 2013
1:21:32 PM

Input:	
Document 1 ID	PowerDocs://KL2/2808784/1
Description	KL2-#2808784-v1-Detroit_COPs_-_Order_re_Forbearance_Agreement
Document 2 ID	PowerDocs://KL2/2808784/6
Description	KL2-#2808784-v6-Detroit_COPs_-_Order_re_Forbearance_Agreement
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<u>Deletion</u>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
<u>Moved deletion</u>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	14
Deletions	4
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	18

EXHIBIT 2

NOT APPLICABLE

EXHIBIT 3

NOT APPLICABLE

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

	X
:	
In re:	Chapter 9
:	
CITY OF DETROIT, MICHIGAN,	Case No. 13-53846 (SWR)
:	
Debtor.	Hon. Steven W. Rhodes
:	
	X

CERTIFICATION OF SERVICE

I, Regina Drouillard, hereby certify that on August 16, 2013, I electronically filed the following:

- Ad Hoc Cops Holders' Limited Objection and Reservation of Rights with Respect to Motion of Debtor for Entry of an Order (I) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant to Rule 9019, and (III) Granting Related Relief

with the Clerk of the Court using the ECF and I hereby certify that the Court's ECF system has served all registered users.

ALLARD & FISH, P.C.

/S/Regina Drouillard
535 Griswold
2600 Buhl Building
Detroit MI 48226
(313) 961-6141

Dated: August 16, 2013
z:\dexia\obj.forbearance agrmt.final.doc

EXHIBIT 5

NOT APPLICABLE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. July 24, 2013
Debtor. . 10:02 a.m.
.

HEARING RE. MOTION OF DEBTOR, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER CONFIRMING THE PROTECTIONS OF SECTIONS 362, 365 AND 922 OF THE BANKRUPTCY CODE (DOCKET #53) AND MOTION OF DEBTOR, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE, FOR ENTRY OF AN ORDER EXTENDING THE CHAPTER 9 STAY TO CERTAIN (A) STATE ENTITIES, (B) NON-OFFICER EMPLOYEES AND (C) AGENTS AND REPRESENTATIVES OF THE DEBTOR (DOCKET #56) BEFORE THE HONORABLE STEVEN W. RHODES UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: HEATHER LENNOX
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
(216) 586-3939

For AFSCME: Lowenstein Sandler, LLP
By: SHARON L. LEVINE
65 Livingston Avenue
Roseland, NJ 07068
(973) 597-2374

For Syncora Kirkland & Ellis, LLP
Guarantee and By: RYAN BENNETT
Syncora Capital 300 North LaSalle
Assurance: Chicago, IL 60654
(312) 862-2074

For Public Safety Erman, Teicher, Miller, Zucker &
Unions: Freedman, PC
By: BARBARA PATEK
400 Galleria Officentre, Suite 444
Southfield, MI 48034
(248) 827-4100

APPEARANCES (continued):

For Police and Clark Hill, PLC
Fire Retirement By: ROBERT GORDON
System and 151 South Old Woodward, Suite 200
General Retirement Birmingham, MI 48009
System of the City (248) 988-5882
of Detroit:

For the UAW: Cohen, Weiss & Simon, LLP
By: BABETTE CECCOTTI
330 West 42nd Street, 25th Floor
New York, NY 10036
(212) 356-0227

For the Flowers Law Offices of William A. Wertheimer
Plaintiffs: By: WILLIAM WERTHEIMER
30515 Timberbrook Lane
Bingham Farms, MI 48025
(248) 644-9200

For Nathaniel In pro per
Brent: NATHANIEL BRENT
538 South Livernois
Detroit, MI 48209

For the Phillips The Sanders Law Firm, PC
Plaintiffs: By: HERBERT A. SANDERS
615 Griswold, Suite 913
Detroit, MI 48226
(313) 962-0099

For the State of Michigan Department of Attorney General
Michigan: By: MATTHEW SCHNEIDER
525 West Ottawa Street, Fl. 7
P.O. Box 30212
Lansing, MI 48909
(517) 241-8403

For the Webster McKnight, McClow, Canzano, Smith &
Plaintiffs: Radtke, PC
By: JOHN R. CANZANO
400 Galleria Officentre, Suite 117
Southfield, MI 48034
(248) 354-9650

Court Recorder: Letrice Calloway
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
1290 West Barnes Road
Leslie, MI 49251
(517) 676-5092

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 I can articulate that for you.

2 THE COURT: Go ahead.

3 MS. LENNOX: But in any event, I don't think we need
4 to go through them under the circumstances, but if we had to
5 meet the preliminary injunction standards, I believe that
6 there would be -- at least with respect to the three lawsuits
7 that we have out there, I think there would be a great chance
8 of success on the merits because by the plaintiffs attempting
9 to condition the authorization to file a municipal bankruptcy
10 on that municipal -- that municipality's foregoing rights
11 under Chapter 9 once in Chapter 9 is a violation of the
12 bankruptcy clause and the supremacy clause. I think we'd win
13 on that, your Honor.

14 Secondly, with respect to irreparable harm, if these
15 actions are not stopped, the city would be irreparably
16 harmed. We would be preventing -- we would be prevented from
17 accessing necessary protections that we are otherwise wholly
18 entitled to access under Chapter 9 and under applicable law,
19 and it would be harmed by our inability to have the
20 appropriate forum, this forum, to decide the matter because
21 the matter presents federal issues for federal jurisdiction.
22 The issues that are presented have to do with can the
23 authorization be conditioned upon limiting a municipality's
24 rights in Chapter 9. That clearly and squarely presents
25 federal issues of this Court's jurisdiction that can only be

1 decided by this Court under the supremacy and the bankruptcy
2 clauses, so without -- an inability for us to pursue that
3 would be irreparable harm to the city. A state court simply
4 does not have jurisdiction to decide those.

5 Third, your Honor, the injunction, if one would call
6 this an injunction, is not going to harm others because, as
7 your Honor pointed out, they do have a forum, indeed the only
8 appropriate forum, in which to decide the issues that can
9 arise only in a bankruptcy case, issues like eligibility,
10 contract rejections, what should go in a plan of adjustment,
11 all of which are addressed by the three lawsuits that are
12 filed. As your Honor pointed out, these litigants will have
13 due process. They will have their day in court. They will
14 have these issues decided, but they will have them decided in
15 the tribunal with proper jurisdiction.

16 And then fourth, your Honor, public policy clearly
17 favors the resolution of issues that exist only under the
18 Bankruptcy Code in the Bankruptcy Courts. Any attempts to
19 have courts that are not of competent jurisdiction determine
20 these issues actually, your Honor, would offend public
21 policy, so while I don't think that we need to go through the
22 preliminary injunction standards in this case and by virtue
23 of the relief that we asked for, if we had to, we would meet
24 them.

25 Now, your Honor, I think I would like to, if it

1 please the Court, address sort of collectively the arguments
2 that were made about should the state courts determine this
3 or should the federal courts determine this, and
4 ultimately -- certainly at least what Ms. Levine was arguing
5 down to, they're arguing the merits of eligibility, and, as
6 your Honor pointed out, that's not before the Court today.
7 Nothing prevents -- as your Honor also pointed out, nothing
8 prevents anybody from seeking to lift the stay in any
9 particular case in any particular matter, and that's a
10 question that can be addressed to this Court.

11 More particularly -- and I'd like to go into this in
12 some detail -- the Court has jurisdiction to hear and
13 consider state court matters in this court. Since the days
14 of Erie versus Tompkins back in 1938, federal courts have
15 applied state law when required to determine the matters
16 before them. It's very clear that now that this case is
17 filed, this Court -- under Section 921 of the Bankruptcy Code
18 and under its jurisdiction granted by 28 U.S.C. 1334(a) and
19 (b), this Court is the only court that is authorized to
20 determine eligibility issues. As part of the eligibility
21 issues, Section 109(c)(2) necessitates the interpretation of
22 state law, and Bankruptcy Courts have done that in virtually
23 every Chapter 9 case that has been filed. In Jefferson
24 County they went through the Alabama statutes for authorizing
25 the case. In the New York City Off-Track Betting Corp. in

1 New York in 2010, the Bankruptcy Court found that the
2 governor had adequate power under the state constitution to
3 issue the order authorizing the filing. In the Suffolk
4 County Regional Off-Track Betting Corporation case, an
5 Eastern District of New York in 2011, the Court, interpreting
6 state law, found that the debtor did not comply because the
7 county resolution violated the -- Suffolk's County's
8 authority and was unconstitutional and dismissed the
9 petition. In the Barnwell County Hospital case in the
10 District of South Carolina in 2012, they examined state law
11 to determine whether the County Hospital Board had
12 authorization to file Chapter 9, and they determined -- they
13 did the inquiry as to whether the authorization was void in
14 light of the state constitutional prohibition against dual
15 office holding, and they concluded it was not. That case,
16 along with other cases, absolutely involved an interpretation
17 of state constitutional issues.

18 So given that the Bankruptcy Court's authority
19 includes the authority to decide state law issues when
20 required in exercising its jurisdiction under the Bankruptcy
21 Code and it is competent to do so, there is absolutely no
22 reason to disrupt the efficient resolution of this bankruptcy
23 case by having the state court cases go forward.

24 Your Honor, if you look at PA 436, Section 18.1,
25 nothing in that authorization statute mentions pensions. It

1 simply mentions a process by which the city had to go through
2 to -- for the governor to make a determination whether we
3 were authorized to file nor, if your Honor would read it, is
4 anything in the governor's authorization letter conditioning
5 the filing on taking any action, not taking any action, or it
6 does not even mention what might happen to pensions in this
7 case, so this Court clearly has jurisdiction to determine the
8 state constitutionality issues.

9 On the other hand and respectfully, the state courts
10 have no jurisdiction to determine the issues of authorization
11 or eligibility under Section 109(c) (2) of the Bankruptcy
12 Code. They have no jurisdiction to determine whether this
13 city had the right to file this case or, more importantly,
14 the rights that this city can exercise now that it is in
15 bankruptcy, and that, your Honor, is exactly what the
16 plaintiffs seek to do in their constitutionality challenges
17 in the three actions that are pending in state court. This
18 is not a secondary jurisdiction matter. This is a matter of
19 primary jurisdiction under Section 1334(a), (b), and Section
20 921 of the Bankruptcy Code for this Court. This is the only
21 Court competent to make those determinations.

22 Mr. Gordon suggested that we don't need to decide
23 the stay issues today because the -- because we should wait
24 to determine eligibility first. First of all, I would say
25 that there's no prejudice to pensioners in this case because

1 pensions are continuing to be paid. There's no change to
2 that, so the delay shouldn't be a factor. Secondly,
3 eligibility has nothing to do with the fact that the
4 automatic stay is in effect. It arose by operation of law on
5 the day that we filed the petition on July 18th, and it is in
6 effect. The only motions before this Court today have to do
7 with that stay that's already in effect, so there's nothing
8 improper about determining those matters today.

9 It has been suggested that Judge Aquilina's
10 declaratory judgment in the Webster case -- remember, your
11 Honor, the Webster case is the case in which the city is not
12 named. The city is not a defendant. It is a case only
13 against the governor and the state treasurer, so the city is
14 not a party. The city didn't litigate any of the issues.
15 Collateral estoppel, therefore, cannot apply to the city in
16 the declaratory judgment in the Webster case. We're not
17 bound by that. Moreover, I would suggest to your Honor that
18 that is one trial court's view -- trial court's view -- that
19 was issued without briefing, without argument, without
20 reasoning, and in haste. That decision is not even binding
21 on any other trial court in the State of Michigan let alone
22 any courts of higher jurisdiction, and it is certainly not
23 binding on this Court.

24 One other procedural issue that I would like to
25 point out that Mr. Gordon and none of the other objectors did

1 point out, but it is noted on the summary sheet that I
2 gave -- the demonstrative that I gave to your Honor earlier
3 today. The pension funding case, the GRS and PFRS case that
4 Mr. Gordon's firm -- in which Mr. Gordon's firm represents
5 the plaintiffs, has been removed to federal court. The city
6 removed it because that is the one case in which the city is
7 the defendant. That case was removed to federal court on
8 July 21st, and so it was removed to the Western District of
9 Michigan, the United States District Court for the Western
10 District of Michigan. State courts don't even have
11 jurisdiction over this case anymore. And in that case the
12 city moved to transfer venue to the District Court in this
13 district so that it will eventually be moved down to your
14 Honor.

15 With respect to a concern that Ms. Ceccotti raised,
16 we are not seeking to stay the courts. We are seeking to
17 stay the litigation by extending the stay protections to the
18 defendants without -- the effect of that -- that that would
19 have, your Honor, is to prevent the parties from acting. We
20 are not seeking to do anything extraordinary under court's
21 jurisprudence.

22 Finally, your Honor, with respect to the arguments
23 that Mr. Bennett made on behalf of Syncora, I think there may
24 be some confusion on Syncora's part. Neither of the motions
25 seek to assert or to extend the stay in favor of the swap

1 counterparties, which are banks that have nothing -- no
2 relationship with the city, or the service corporations
3 themselves or any other party related to those entities other
4 than a couple of city officers that serve as directors of the
5 service corporations, and they do that because they're
6 required to do that in the performance of their duties as
7 city officers pursuant to a city ordinance, which is
8 Ordinance Number 0305. We are not seeking to protect the
9 corporations themselves. **We are not seeking to protect any**
10 **swap counterparties, so I want to make that clear.** Syncora
11 offers no evidence about how it will be prejudiced,
12 particularly because, again, nothing in the motions prevents
13 Syncora from coming in and seeking to lift the stay if one is
14 imposed.

15 We also don't seek in the stay confirmation motion
16 to seek relief behind actions to enforce a claim against the
17 debtor. Paragraph 4 of the proposed order makes that very
18 clear. It simply parrots the statute, and that's in the stay
19 confirmation motion. Because the city is a party to the
20 Syncora suit, the only stay issue that would apply to that
21 would be the stay confirmation issue. We're not seeking any
22 extension with respect to that lawsuit, and, frankly,
23 counterclaims may be asserted in that case, which would be
24 stayed, and the case started, your Honor, because Syncora was
25 illegally attempting to trap some of the city's revenues, so,

1 August 2nd.

2 The Court will, therefore, grant both of these
3 motions. The Court wants the opportunity to review the
4 proposed orders that were attached to the debtor's motions.
5 In the event the Court wants to tweak or edit any of them, I
6 would ask debtor's counsel to submit those orders in Word or
7 WordPerfect form through the Court's order processing
8 program. I know for sure that one of the things I want the
9 stay extension order to do is to be sure it explicitly
10 preserves the opportunity for parties to file motions for
11 relief from it under Section 362(d), but we'll take care of
12 that, so just submit the orders in the order processing
13 program as they were attached to the motion.

14 That's all I have. Is there anything that anyone
15 else would like to raise at this time?

16 MS. PATEK: Your Honor, on behalf of the public
17 safety unions, we did ask to broaden --

18 THE COURT: You should identify yourself for the
19 record.

20 MS. PATEK: I'm sorry. Barbara Patek on behalf of
21 the public safety unions. We did make a request for
22 affirmative relief, which was not listed among the items that
23 your Honor did not rule on with respect --

24 THE COURT: Yes. Thank you for reminding me of
25 that. In the interest of due process, the Court must

1 conclude that it is necessary for you to file a specific
2 motion requesting that relief. If you think that expedited
3 consideration is appropriate, you can request that.

4 MS. PATEK: Thank you, your Honor.

5 THE COURT: Would anyone else like to raise
6 anything? Yes, ma'am.

7 MS. LENNOX: Thank you, your Honor. For the record,
8 Heather Lennox of Jones Day on behalf of the City of Detroit.
9 A procedural question, your Honor, about the matters that
10 you've set for hearing on August 2nd. There was no objection
11 deadline set for the four motions. Would your Honor wish to
12 set one?

13 THE COURT: I didn't set one in light of the
14 expedited consideration of them, so I'm really not inclined
15 to. If a party wants me to consider a written objection,
16 they should get it to me in time for me to consider it.
17 There was more specifically a question about a response time
18 on the 365 assumption motion, and we got a request -- a
19 motion for clarification as to that. I think that was
20 mentioned earlier today.

21 MS. LENNOX: Yes.

22 THE COURT: And I will deal with that separately in
23 a separate order that I will enter later today or tomorrow.

24 MS. LENNOX: Thank you, your Honor.

25 THE COURT: All right. Anything further? Mr.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846
MICHIGAN, .
. Detroit, Michigan
. August 2, 2013
Debtor. . 10:01 a.m.
.

HEARING RE. STATUS CONFERENCE
MOTION OF DEBTOR FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
ASSUMPTION OF THE CERTAIN FORBEARANCE AND OPTIONAL
TERMINATION AGREEMENT PURSUANT TO SECTION 365(a) OF THE
BANKRUPTCY CODE, (II) APPROVING SUCH AGREEMENT PURSUANT TO
RULE 9019 AND (III) GRANTING RELATED RELIEF (DOCKET #17);
MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (A) DIRECTING AND
APPROVING FORM OF NOTICE OF COMMENCEMENT OF CASE AND MANNER
OF SERVICE AND PUBLICATION OF NOTICE AND (B) ESTABLISHING A
DEADLINE FOR OBJECTIONS TO ELIGIBILITY AND A SCHEDULE FOR
THEIR CONSIDERATION (DOCKET #18); MOTION OF DEBTOR FOR
ENTRY OF AN ORDER APPOINTMENT KURTZMAN CARSON CONSULTANTS,
LLC, AS CLAIMS AND NOTICING AGENT PURSUANT TO 28 U.S.C.,
SECTION 156(c), SECTION 105(a) OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULE 2002 (DOCKET #19); AND MOTION OF DEBTOR,
PURSUANT TO SECTION 1102(a)(2) OF THE BANKRUPTCY CODE FOR
ENTRY OF AN ORDER DIRECTING THE APPOINTMENT OF A
COMMITTEE OF RETIRED EMPLOYEES
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor: Jones Day
By: DAVID HEIMAN
HEATHER LENNOX
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190
(216) 586-3939

Jones Day
By: BRUCE BENNETT
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071-2300
(213) 243-2382

APPEARANCES (continued):

Jones Day
By: GREGORY M. SHUMAKER
51 Louisiana Avenue, N.W.
Washington, DC 20001-2113
(202) 879-3679

For Assured Guaranty Municipal Corp.: Winston & Strawn, LLP
By: LAWRENCE A. LAROSE
200 Park Avenue
New York, NY 10166-4193
(212) 294-3286

For AFSCME: Lowenstein Sandler, LLP
By: SHARON L. LEVINE
65 Livingston Avenue
Roseland, NJ 07068
(973) 597-2374

For Police and Fire Retirement System and General Retirement System of the City of Detroit: Clark Hill, PLC
By: ROBERT GORDON
151 South Old Woodward, Suite 200
Birmingham, MI 48009
(248) 988-5882

For the UAW: Cohen, Weiss & Simon, LLP
By: BABETTE CECCOTTI
330 West 42nd Street, 25th Floor
New York, NY 10036
(212) 356-0227

For National Public Finance Guarantee Corp.: Sidley Austin, LLP
By: JEFFREY E. BJORK
555 West 5th Street
Los Angeles, CA 90013
(213) 896-6037

For Public Safety Unions: Erman, Teicher, Miller, Zucker & Freedman, PC
By: BARBARA PATEK
400 Galleria Officentre, Suite 444
Southfield, MI 48034
(248) 827-4100

For Retired Detroit Police Members Association: Strobl & Sharp, PC
By: LYNN M. BRIMER
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304
(248) 540-2300

APPEARANCES (continued):

For David Sole: Jerome D. Goldberg, PLLC
By: JEROME GOLDBERG
2921 East Jefferson, Suite 205
Detroit, MI 48207
(313) 393-6001

For Retired Detroit Police and Fire Fighters Association and Detroit Retired City Employees Association: Silverman & Morris, PLLC
By: THOMAS R. MORRIS
30500 Northwestern Highway, Suite 200
Farmington Hills, MI 48334
(248) 539-1330

For Syncora Guarantee and Syncora Capital Assurance: Kirkland & Ellis, LLP
By: STEPHEN HACKNEY
300 North LaSalle
Chicago, IL 60654
(312) 862-2074

For Daniel McDermott: Office of the United States Trustee
By: MARIA GIANNIRAKIS
201 Superior Avenue, Room 441
Cleveland, OH 44114
(216) 522-7800

For Michael Karwoski: MICHAEL J. KARWOSKI
In pro per
26015 Felicity Lndg.
Harrison Township, MI 48045
(313) 378-7642

For Dennis Taubitz: DENNIS TAUBITZ
In pro per

For Erste Europaische Pfandbrief-und Kommunalkreditbank Aktiengesellschaft in Luxemburg, S.A.: Ballard Spahr, LLP
By: VINCENT J. MARRIOTT, III
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
(215) 864-8236

For Financial Guaranty Insurance Company: Weil, Gotshal & Manges, LLP
By: ALFREDO PEREZ
700 Louisiana, Suite 1600
Houston, TX 77002
(713) 546-5040

APPEARANCES (continued):

For U.S. Bank: McDermott, Will & Emery, LLP
By: WILLIAM P. SMITH
227 West Monroe Street, Suite 4700
Chicago, IL 60606
(312) 372-2000

Court Recorder: Jane Murphy
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
1290 West Barnes Road
Leslie, MI 49251
(517) 676-5092

Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

1 MR. HACKNEY: Yes.

2 THE COURT: Given the very restricted role that a
3 court plays in either reviewing the decision of a debtor to
4 assume or reject a contract or the decision of a debtor to
5 settle a dispute, why do you need discovery at all?

6 MR. HACKNEY: So you've anticipated the first part
7 of our argument, your Honor, which was why we filed the
8 statement yesterday to express concerns that we had when you
9 take the proposed order that they have submitted to you and
10 the forbearance agreement and you lay them next to the Orion
11 agreement from the Second Circuit. We have concerns that
12 that order would entail the Court making judicial findings,
13 judicial declarations that could foreclose the rights of
14 third parties, and you see --

15 THE COURT: Okay. If that's your concern, I will
16 assure you at the outset that my decision will be nothing
17 more than to approve the decision of the city to assume this
18 contract and enter into the settlement or disapprove of it.

19 MR. HACKNEY: And that assurance is very helpful I
20 would say at the outset. I would still say, though, your
21 Honor, that this is a sizeable transaction that the city is
22 proposing to potentially assume and perform under. Whether
23 they can perform under it is obviously a subject of dispute
24 that I'll bracket, but whether or not this is within the
25 business judgment of both the city and potentially the